As global food demand continues to increase, there is an immediate need to develop new agriculture tools that are productive and sustainable. With the use of new agricultural biotechnologies, genetically enhanced seeds are already decreasing pest infestation, increasing crop yields, and reducing the need for pesticides. I believe that these new farming methods offer tremendous potential for farmers and consumers from an agronomic, economic, and environmental standpoint. As a result, our rural economies are strengthened, and our agricultural products are becoming more competitive in the global market.

I rise today to acknowledge and commend Dr. Robert Horsch and the Monsanto team of researchers for their excellent work. They have played a critical role in the pioneering of gene transfer technology and plant regeneration which began more than 15 years ago. As a result of their relentless pursuit of a vision, their development of agricultural biotechnology, as a science and as an industry, will continue to keep the United States at the forefront of food production.

Dr. Horsch and the Monsanto team of scientists are visionaries in their quest to improve the quality of life. Their perseverance, commitment, and dedication to science is an inspiration for others to reach their ''highest and best.'' I wish them continued success as they guide us on a revolutionary path into the Twenty-First Century.

NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is with great honor and privilege that I congratulate Dr. Ernest G. Jaworski, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Ernest G. Jaworski was the Director of Biological Sciences before retiring from Monsanto in 1993. Since then, he has served as Scientist In Residence at the St. Louis Science Center and Interim Director of the Donald Danforth Plant Science Center. He earned his Doctorate in biochemistry in 1952, from Oregon State University. Among his accomplishments, Dr. Jaworski assembled and led the team that developed the world's first practical system to introduce foreign genes into plants.

Agriculture is the foundation of many countries' economies, and consequently, the majority of the world's population makes its living in agriculture and food-based activities. Transforming these agricultural economies is important to achieving broad-based economic growth, not only in the United States, but worldwide. In this respect, investments in new agricultural technologies will increase farmer incomes, promote food security, advance other critical development initiatives, and contribute to environmental improvements. Agricultural biotechnology was first introduced to farms in 1995, and today in the United States, there are over 53 million acres of biotech crops.

As global food demand continues to increase, there is an immediate need to develop new agriculture tools that are productive and sustainable. With the use of new agricultural biotechnologies, genetically enhanced seeds are already decreasing pest infestation, increasing crop yields, and reducing the need for pesticides. I believe that these new farming methods offer tremendous potential for farmers and consumers from an agronomic, economic, and environmental standpoint. As a result, our rural economies are strengthened, and our agricultural products are becoming more competitive in the global market.

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Dr. Jaworski and the Monsanto team of scientists are visionaries in their quest to improve the quality of life. Their perseverance, commitment, and dedication to science is an inspiration for others to reach their ''highest and best.'' I wish them continued success as they guide us on a revolutionary path into the Twenty-First Century.

NATIONAL MEDAL OF TECHNOLOGY AWARD

Mr. ASHCROFT. Mr. President, it is a great honor and privilege to congratulate Dr. Stephen G. Rogers, a member of the Monsanto team of scientists, on receiving the National Medal of Technology Award for developing biotechnology that will help meet the global agricultural challenges of the Twenty-First Century.

Dr. Stephen G. Rogers is the director of biotechnology projects for Europe located at Monsanto's Cereals Technology Center in Cambridge, England, where he is presently working on the integration of modern crop breeding with improved crop methods. He earned his Doctorate in biology in 1976, from the Johns Hopkins University. Among his accomplishments, Dr. Rogers is a member of the team that developed the first method for producing new proteins in plants, leading to the discovery of virus resistance and insect protection traits for crops—a development that is revolutionizing modern farming.

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I rise today to acknowledge and commend Dr. Stephen Rogers and the Monsanto team of researchers for their excellent work. They have played a critical role in the pioneering of gene transfer technology and plant regeneration which began more than 15 years ago. As a result of their relentless pursuit of a vision, their development of agricultural biotechnology, as a science and as an industry, will continue to keep the United States at the forefront of food production.

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CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

Y2K ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 96. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 96) to regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems relating to processing data that includes a 2-digit expression of that year's date.

The Senate proceeded to consider the bill, which had been reported from the

Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Act''.

(b) TABLE OF SECTIONS.—The table of sections for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

The Congress finds that:

(1) The majority of responsible business enterprises in the United States are committed to working in cooperation with their contracting partners towards the timely and cost-effective resolution of the many technological, business, and legal issues associated with the Y2K date change.

(2) Congress seeks to encourage businesses to concentrate their attention and resources in short time remaining before January 1, 2000, on addressing, assessing, remediating, and testing their Y2K problems, and to minimize any possible business disruptions associated with the Y2K issues.

(3) It is appropriate for the Congress to enact legislation to assure that Y2K problems do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of Y2K.

(4) Y2K issues will potentially affect practically all business enterprises to at least some degree, giving rise possibly to a large number of disputes.

(5) Resorting to the legal system for resolution of Y2K problems is not feasible for many businesses, particularly small businesses, because of its complexity and expense.

(6) The delays, expense, uncertainties, loss of control, adverse publicity and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with the Y2K date change, and work against the successful resolution of those difficulties.

(7) Congress recognizes that every business in the United States should be concerned that widespread and protracted Y2K litigation may threaten the network of valued and trusted business relationships that are so important to the effective functioning of the world economy, and which may put unbearable strains on an overburdened and sometime ineffective judicial system.

(8) A proliferation of frivolous Y2K lawsuits by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(9) Congress encourages businesses to approach their Y2K disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is a dispute over a Y2K problem, and, if necessary, urges the parties to enter into voluntary, nonbinding mediation rather than litigation.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION.—The term ''Y2K action'' means a civil action commenced in any Federal or State court in which the plaintiff's alleged harm or injury resulted directly or indirectly from an actual or potential Y2K failure, or a claim or defense of a defendant is related directly or indirectly to an actual or potential Y2K failure.

(2) Y2K FAILURE.—The term ''Y2K failure'' means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) ACTUAL DAMAGES.—The term ''actual damages'' means direct damages for injury to tangible property, and the cost of repairing or replacing products that have a material defect.

(4) ECONOMIC LOSS.—Except as otherwise specifically provided in a written contract between the plaintiff and the defendant in a Y2K action (and subject to applicable State law), the term ''economic loss''—

(A) means amounts awarded to compensate an injured party for any loss other than for personal injury or damage to tangible property (other than property that is the subject of the contract); and

(B) includes amounts awarded for—

(i) lost profits or sales;

(ii) business interruption;

(iii) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(iv) losses that arise because of the claims of third parties;

(v) losses that must be pleaded as special damages; and

(vi) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law); but

(C) does not include actual damages.

(5) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or intended. The term ''material defect'' does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only on a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(6) PERSONAL INJURY.—The term ''personal injury''—

(A) means any physical injury to a natural person, including death of the person; but

(B) does not include mental suffering, emotional distress, or like elements of injury that do not constitute physical harm to a natural person.

(7) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(8) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(9) PERSON.—

(A) IN GENERAL.—The term ''person'' has the meaning given to that term by section 1 of title 1, United States Code.

(B) GOVERNMENT ENTITIES.—The term ''person'' includes an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities) when that agency, instrumentality, or other entity is a plaintiff or a defendant in a Y2K action.

(10) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any Y2K action brought in a State or Federal court after February 22, 1999.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action under Federal or State law.

(c) ACTIONS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED.—This Act does not apply to a claim for personal injury or for wrongful death.

(d) WRITTEN CONTRACT CONTROLS.—The provisions of this Act do not supersede a valid, enforceable written contract between a plaintiff and a defendant in a Y2K action.

(e) PREEMPTION OF STATE LAW.—This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) IN GENERAL.—In any Y2K action in which punitive damages may be awarded under applicable State law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the defendant acted with conscious and flagrant disregard for the rights and property of others.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—Punitive damages against a defendant in such a Y2K action may not exceed the larger of—

(A) 3 times the amount awarded for actual damages; or

(B) $250,000.

(2) SPECIAL RULE.—In the case of a defendant—

(A) who—

(i) is sued in his or her capacity as a individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, unit of local government, or organization with fewer than 25 full-time employees,

paragraph (1) shall be applied by substituting ''smaller'' for ''larger''.

(c) GOVERNMENT ENTITIES.—Punitive damages in such a Y2K action may not be awarded against a person described in section 3(8)(B).

TITLE I—OPPORTUNITY TO RESOLVE Y2K PROBLEMS

SEC. 101. PRE-FILING NOTICE.

(a) IN GENERAL.—Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff with a Y2K

claim shall serve on each prospective defendant in that action a written notice that identifies with particularity—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) the remedy sought by the prospective plaintiff;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) DELAY OF ACTION.—Except as provided in subsection (d), a prospective plaintiff may not commence a Y2K action in Federal or State court until the expiration of 90 days from the date of service of the notice required by subsection (a).

(c) RESPONSE TO NOTICE.—Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall serve on each prospective plaintiff a written statement acknowledging receipt of the notice, and proposing the actions it has taken or will take to address the problem identified by the prospective plaintiff. The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(d) FAILURE TO RESPOND.—If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c); or

(2) does not describe the action, if any, the prospective defendant will take to address the problem identified by the prospective plaintiff,

then the 90-day period specified in subsection (a) will terminate at the end of the 30-day period as to that prospective defendant and the prospective plaintiff may commence its action against that prospective defendant.

(e) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) and without awaiting the expiration of the 90-day period specified in subsection (b), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for 90 days after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during this 90-day period.

(f) EFFECT OF CONTRACTUAL WAITING PERIODS.—In cases in which a contract requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided in the contract is controlling over the waiting period specified in subsections (a) and (e).

(g) STATE LAW CONTROLS ALTERNATIVE METHODS.—Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

SEC. 102. PLEADING REQUIREMENTS.

(a) NATURE AND AMOUNT OF DAMAGES.—In all Y2K actions in which damages are requested, the complaint shall provide specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(b) MATERIAL DEFECTS.—In any Y2K action in which the plaintiff alleges that a product or service is defective, the complaint shall contain specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(c) REQUIRED STATE OF MIND.—In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each element of that claim, state with particularity the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 103. DUTY TO MITIGATE.

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably could have been, aware, including reasonable efforts made by a defendant to make information available to purchasers or users of the defendant's product or services concerning means of remedying or avoiding Y2K failure.

SEC. 104. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—A person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportional responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) SEVERAL LIABILITY.—Liability in a Y2K action shall be several but not joint.

TITLE II—Y2K ACTIONS INVOLVING CONTRACT-RELATED CLAIMS

SEC. 201. CONTRACTS ENFORCED.

In any Y2K action, any written term or condition of a valid and enforceable contract between the plaintiff and the defendant, including limitations or exclusions of liability and disclaimers of warranty, is fully enforceable, unless the court determines that the contract as a whole is unenforceable. If the contract is silent with respect to any matter, the interpretation of the contract with respect to that matter shall be determined by applicable law in force at the time the contract was executed.

SEC. 202. DEFENSES.

(a) REASONABLE EFFORTS.—In any Y2K action in which breach of contract is alleged, in addition to any other rights provided by applicable law, the party against whom the claim of breach is asserted shall be allowed to offer evidence that its implementation of the contract, or its efforts to implement the contract, were reasonable in light of the circumstances for the purpose of limiting or eliminating the defendant's liability.

(b) IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY.—In any Y2K action in which breach of contract is alleged, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by applicable law in existence on January 1, 1999, and nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

SEC. 203. DAMAGES LIMITATION.

In any Y2K action for breach or repudiation of contract, no party may claim, nor be awarded, consequential or punitive damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was executed or by operation of Federal law.

SEC. 204. MIXED ACTIONS.

If a Y2K action includes claims based on breach of contract and tort or other noncontract claims, then this title shall apply to the contract-related claims and title III shall apply to the tort or other noncontract claims.

TITLE III—Y2K ACTIONS INVOLVING TORT CLAIMS

SEC. 301. DAMAGES IN TORT CLAIMS.

A party to a Y2K action making a tort claim may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party;

(2) such losses result directly from a personal injury claim resulting from the Y2K failure; or

(3) such losses result directly from damage to tangible property caused by the Y2K failure (other than damage to property that is the subject of the contract),

and such damages are permitted under applicable Federal or State law.

SEC. 302. CERTAIN DEFENSES.

(a) GOOD FAITH; REASONABLE EFFORTS.—In any Y2K action except an action for breach or repudiation of contract, the party against whom the claim is asserted shall be entitled to establish, as a complete defense to any claim for damages, that it acted in good faith and took measures that were reasonable under the circumstances to prevent the Y2K failure from occurring or from causing the damages upon which the claim is based.

(b) DEFENDANT'S STATE OF MIND.—In a Y2K action making a claim for money damages in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant knew, or recklessly disregarded a known and substantial risk, that the failure would occur in the specific facts and circumstances of the claim.

(c) FORESEEABILITY.—In a Y2K action making a claim for money damages, the defendant is not liable unless the plaintiff proves by clear and convincing evidence, in addition to all other requisite elements of the claim, that the defendant knew, or should have known, that the defendant's action or failure to act would cause harm to the plaintiff in the specific facts and circumstances of the claim.

(d) CONTROL NOT DETERMINATIVE OF LIABILITY.—The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was within the control of the party against whom a claim for money damages is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action.

(e) PRESERVATION OF EXISTING LAW.—The provisions of this section are in addition to, and not in lieu of, any requirement under applicable law as to burdens of proof and elements necessary for prevailing in a claim for money damages.

SEC. 303. LIABILITY OF OFFICERS AND DIRECTORS.

(a) IN GENERAL.—A director, officer, trustee, or employee of a business or other organization (including a corporation, unincorporated association, partnership, or non-profit organization) shall not be personally liable in any Y2K action making a tort or other noncontract claim in that person's capacity as a director, officer, trustee, or employee of the business or organization for more than the greater of—

(1) $100,000; or

(2) the amount of pre-tax compensation received by the director, officer, trustee, or employee from the business or organization during the 12 months immediately preceding the act or omission for which liability was imposed.

(b) EXCEPTION.—Subsection (a) does not apply in any Y2K action in which it is found by clear and convincing evidence that the director, officer, trustee, or employee—

(1) intentionally made misleading statements regarding any actual or potential year 2000 problem; or

(2) intentionally withheld from the public significant information there was a legal duty to disclose to the public regarding any actual or potential year 2000 problem of that business or organization which would likely result in actionable Y2K failure.

(c) STATE LAW, CHARTER, OR BYLAWS.—Nothing in this section supersedes any provision of

State law, charter, or a bylaw authorized by State law, in existence on January 1, 1999, that establishes lower limits on the liability of a director, officer, trustee, or employee of such a business or organization.

TITLE IV—Y2K CLASS ACTIONS

SEC. 401. MINIMUM INJURY REQUIREMENT.

In any Y2K action involving a claim that a product or service is defective, the action may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law or applicable rules of civil procedure; and

(2) the court finds that the alleged defect in a product or service is material as to the majority of the members of the class.

SEC. 402. NOTIFICATION.

(a) NOTICE BY MAIL.—In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class by United States mail, return receipt requested. Persons whose receipt of the notice is not verified by the court or by counsel for one of the parties shall be excluded from the class unless those persons inform the court in writing, on a date no later than the commencement of trial or entry of judgment, that they wish to join the class.

(b) CONTENTS OF NOTICE.—In addition to any information required by applicable Federal or State law, the notice described in this subsection shall—

(1) concisely and clearly describe the nature of the action;

(2) identify the jurisdiction where the case is pending; and

(3) describe the fee arrangement of class counsel.

SEC. 403. FORUM FOR Y2K CLASS ACTIONS.

(a) JURISDICTION.—The District Courts of the United States have original jurisdiction of any Y2K action, without regard to the sum or value of the matter in controversy involved, that is brought as a class action if—

(1) any member of the proposed plaintiff class is a citizen of a State different from the State of which any defendant is a citizen;

(2) any member of the proposed plaintiff class is a foreign Nation or a citizen of a foreign Nation and any defendant is a citizen or lawful permanent resident of the United States; or

(3) any member of the proposed plaintiff class is a citizen or lawful permanent resident of the United States and any defendant is a citizen or lawful permanent resident of a foreign Nation.

(b) PREDOMINANT STATE INTEREST.—A United States District Court in an action described in subsection (a) may abstain from hearing the action if—

(1) a substantial majority of the members of all proposed plaintiff classes are citizens of a single State;

(2) the primary defendants are citizens of that State; and

(3) the claims asserted will be governed primarily by the laws of that State.

(c) LIMITED CONTROVERSIES.—A United States District Court in an action described in subsection (a) may abstain from hearing the action if—

(1) the value of all matters in controversy asserted by the individual members of all proposed plaintiff classes in the aggregate does not exceed $1,000,000, exclusive of interest and costs;

(2) the number of members of all proposed plaintiff classes in the aggregate in less than 100; or

(3) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.

(d) DIVERSITY DETERMINATION.—For purposes of applying section 1322(b) of title 28, United States Code, to actions described in subsection (a) of this section, a member of a proposed class is deemed to be a citizen of a State different from a corporation that is a defendant if that member is a citizen of a State different from each State of which that corporation is deemed a citizen.

(e) REMOVAL.—

(1) IN GENERAL.—A class action described in subsection (a) may be removed to a district court of the United States in accordance with chapter 89 of title 28, United States Code, except that the action may be removed—

(A) by any defendant without the consent of all defendants; or

(B) any plaintiff class member who is not a named or representative class member of the action for which removal is sought, without the consent of all members of the class.

(2) TIMING.—This subsection applies to any class before or after the entry of any order certifying a class.

(3) PROCEDURE.—

(A) IN GENERAL.—Section 1446(a) of title 28, United States Code, shall be applied to a plaintiff removing a case under this section by treating the 30-day filing period as met if a plaintiff class member who is not a named or representative class member of the action for which removal is sought files notice of removal within 30 days after receipt by such class member of the initial written notice of the class action provided at the trial court's direction.

(B) APPLICATION OF SECTION 1446.—Section 1446 of title 28, United States Code, shall be applied—

(i) to the removal of a case by a plaintiff under this section by substituting the term ''plaintiff'' for the term ''defendant'' each place it appears; and

(ii) to the removal of a case by a plaintiff or a defendant under this section—

(I) by inserting the phrase ''by exercising due diligence'' after ''ascertained'' in the second paragraph of subsection (b); and

(II) by treating the reference to ''jurisdiction conferred by section 1332 of this title'' as a reference to subsection (a) of this section.

(f) APPLICATION OF SUBSTANTIVE STATE LAW.—Nothing in this section alters the substantive law applicable to an action described in subsection (a).

(g) PROCEDURE AFTER REMOVAL.—If, after removal, the court determines that no aspect of an action that is subject to its jurisdiction solely under the provisions of section 1332(b) of title 28, United States Code, may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the court shall strike the class allegations from the action and remand the action to the State court. Upon remand of the action, the period of limitations for any claim that was asserted in the action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I am going to offer a compromise amendment that is at the desk, and I further ask unanimous consent that debate only be in order following the offering of that amendment until 2:15 today.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE AMENDMENT WITHDRAWN

Mr. MCCAIN. Mr. President, as chairman of the Commerce Committee and with the authority of the committee, I withdraw the committee amendment.

The PRESIDING OFFICER. The committee amendment is withdrawn.

The committee amendment was withdrawn.

AMENDMENT NO. 267

(Purpose: To regulate interstate commerce by making provision for dealing with losses arising from Year 2000 problem-related failures that may disrupt communications, intermodal transportation, and other matters affecting interstate commerce)

Mr. MCCAIN. I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report the substitute amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. WYDEN, Mr. GORTON, Mr. ABRAHAM, Mr. LOTT, Mr. FRIST, Mr. BURNS, Mr. SMITH of Oregon, and Mr. SANTORUM proposes an amendment numbered 267.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Mr. President, I am pleased to offer, with my friend and colleague from Oregon, Senator WYDEN, a substitute amendment to S. 96, the Y2K Act. The substitute amendment we offer is truly a bipartisan effort. We have worked diligently with our colleagues on both sides of the aisle and will continue to do so to address concerns, narrow some provisions, and assure that this bill will sunset when it is no longer pertinent and necessary.

Senator WYDEN, who said at our committee markup that he wants to get to ''yes,'' has worked tirelessly with me to get there. He has offered excellent suggestions and comments, and I think the substitute we bring today is a better piece of legislation for his efforts.

Specifically, this substitute would provide time for plaintiffs and defendants to resolve Y2K problems without litigation. It reiterates the plaintiff's duty to mitigate damages and highlights the defendant's opportunity to assist plaintiffs in doing that by providing information and resources. It provides for proportional liability in most cases with exceptions for fraudulent or intentional conduct or where the plaintiff has limited assets.

It protects governmental entities, including municipalities, school, fire, water and sanitation districts from punitive damages, and it eliminates punitive damage limits for egregious conduct while providing some protection against runaway punitive damage awards. It provides protection for those not directly involved in a Y2K failure.

The bill as amended does not cover personal injury and wrongful death cases. It is important to keep in mind the broad support this bill has from virtually every segment of our economy. This bill is important not only to the high-tech industry or to big business but carries the strong support of small business, retailers and wholesalers. Many of those supporting the

bill will find themselves as both plaintiffs and defendants. They have weighed the benefits and drawbacks of the provisions of this bill and have overwhelmingly concluded that their chief priority is to prevent and fix Y2K problems and make our technology work and not divert the resources into time-consuming and costly litigation.

Mr. President, I would like to interrupt my prepared statement at this time to mention that when we passed this legislation through the Commerce Committee, unfortunately, on one of the rare occasions in the more than 2 years that I have been chairman of the committee, it was passed on a party line vote, on a vote of 11 to 9.

At that time Senator WYDEN, Senator KERRY, Senator DORGAN and others expressed a strong desire to work in a bipartisan fashion so that we could pass this legislation. Most of us are aware that when legislation goes to the floor along party lines and is divided on party lines, the chances of passage are minimal, to say the least.

We worked with Senator WYDEN and others, and we made eight major compromises in the original legislation, sufficient in the view of many to enhance the ability of this legislation to be passed and, very frankly, satisfy at least some of the concerns of the trial lawyers and others that had been voiced about the legislation.

Last night, Senator WYDEN and the Senator from Connecticut, Senator DODD, and I met, and we discussed three major concerns that Senator DODD had, which two we could agree to, and on the third there was some discussion about language. It was my distinct impression at that time that we had come to an agreement on these three particular additional items.

Apparently this morning that is not the case. On the third item there is still not agreement between ourselves and Senator DODD and his staff. I hope we can continue to work on that language.

Mr. President, I have been around here now for 13 years. I have seen legislation compromise after compromise made to the point where the legislation itself becomes meaningless. We are approaching that point now.

I will be glad to negotiate with anyone. My friend from Massachusetts, Senator KERRY, and I have been in discussions as well. But we cannot violate some of the fundamental principles that I just articulated as the reason for this legislation. If we weren't facing a very severe crisis in about 7 or 8 months from now—7 months, I guess—then there would not be a need for this legislation.

Our object is to protect innocent business people, both large, medium and small, from being exposed to the kind of lawsuits which we know will transpire if we do not do something about the problem.

It is not only important that we receive the support of the ''high-tech community,'' which is very important to the future of our Nation's economy, but the medium-size businesses, the small businesses, the retailers and others are all in support of this legislation.

I am aware of the power of the American Trial Lawyers Association. I have been beaten by them on several occasions. They have a string of victories to their credit. They are also, among others, another argument for campaign finance reform, which is a diatribe I will not enter in today. The fact is this issue needs to be resolved. I would be very disappointed if over a couple of points we cannot agree and this legislation fails to proceed.

Did my friend from Oregon have a question or a comment?

Mr. WYDEN. Yes.

Mr. MCCAIN. Mr. President, I ask unanimous consent to yield to the Senator from Oregon, without losing my claim to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon is recognized.

Mr. WYDEN. Thank you, Mr. President. I thank the chairman of the Commerce Committee for his comments. I will just advise my colleagues where I think we are.

First, I think it is important to note that the chairman of the Commerce Committee has made nine major changes in the legislation—all of them proconsumer, proplaintiff—since the time this legislation left the Commerce Committee. I and other Democrats felt it was important. I want the RECORD to show that those are major, substantive changes, and as the chairman indicated, we had some discussions with Senator DODD last night and I am hopeful they are going to bear fruit as well, because Senator DODD has tackled this in a very thoughtful way as well.

I also think it is important that our leadership, Senator LOTT and Senator DASCHLE, continue, as they have tried to do, to help us work through some of the procedural issues which are not directly relevant to this legislation, so that it is possible to vote on the McCain-Wyden substitute expeditiously.

I want to tell the Senate that now is the time when this can be done in a thoughtful and deliberative way. I don't think the Senate wants to come back next January, when there is a state of panic, as I believe there well could be, over this problem. The time to do it is now. That is what we have been working on in committee.

This is not a partisan issue. It affects every computer system that uses date information, and I want it understood how this happened. Y2K is not a design flaw; it was an engineering tradeoff. In order to get more space on a disc and in memory, the precision of century indicators was abandoned. Now, it is hard to believe today that disc and memory space used to be at a premium, but it was. The tradeoff became an industry standard, and computers cannot work at all without these industry standards. The standards are the means by which programs and systems exchange information, and it was recently noted: ''The near immortality of computer software came as a shock to programmers. Ask anybody who was there. We never expected this stuff to still be around.''

One way to solve the problem might be to dump all the old layers of computer code, but that is not realistic. So our goal ought to be to try to bring these systems into compliance as soon as possible and, at the same time—and this is what the McCain-Wyden substitute does—have a safety net in place.

This is a bipartisan effort. I would like to briefly wrap up by outlining several of the major changes. The first is that there is a 3-year sunset provision. There are a number of individuals and groups who said, ''Well, this is just an effort to rewrite the tort law and make changes that are going to stand for all time.'' This provision says that any Y2K failure must occur before January 1, 2003, in order to be eligible to be covered by the legislation.

Second, there were various concerns that there were vague defenses in the legislation, particularly terms that involve a reasonable effort. We said that that ought to be changed, we ought to make sure there aren't any new and ill-defined Federal defenses. That has been changed.

Finally, and especially important, for truly egregious kinds of conduct and fraudulent activity, where people simply misrepresent the facts in the marketplace, we ensure that punitive damages and the opportunity to send a deterrent to egregious and fraudulent activity are still in place.

So I think these are just some of the major changes we are going to outline in the course of the debate. I also say that the latest draft also restores liability for directors and officers, which was again an effort to try to be responsive to those who felt that the legislation was not sufficiently proconsumer.

I only say—and I appreciate that the chairman of the committee yielded me this time—that I think after all of these major changes, which have taken many hours and, in fact, weeks since the time this legislation came before the Committee on Commerce, we have now produced legislation that particularly Democratic Members of the Senate can support.

This is not legislation where, for example, if someone had their arm cut off tragically in a tractor accident, they would not have a remedy. We make sure that all personal injuries which could come about—say an elevator doesn't work and a person is tragically injured. This legislation doesn't affect that. That person has all the remedies in the tort law and the personal injury laws that are on the books. This involves ensuring that there is not chaos in the marketplace early next year, that we don't tie up thousands of our

businesses in frivolous suits and do great damage to the emerging sector of our economy that is information driven.

I thank the chairman for the many changes he has made, and I am especially hopeful that over the next few hours the two leaders, Senator LOTT and Senator DASCHLE, can help us work through the procedural quagmire the Senate is in, so we can pass this legislation now, at a time where there is an opportunity to pursue it in a deliberative way.

I yield the floor.

Mr. MCCAIN. Mr. President, I thank the Senator from Oregon for his enormous work on this legislation. I think it bears repeating what we have been able to do here. I believe any objective observer would agree that what Senator WYDEN has brought to the bill represents a tremendous movement from the bill we originally passed in the Commerce Committee.

These discussions with Senator WYDEN and others resulted in at least eight major changes. The biggest change was that we eliminated the so-called good-faith defense, because we could not define good faith and reasonable efforts.

We also put in, as Senator WYDEN mentioned, a sunset of January 1, 2003. There is no cap on punitive damages when the defendant has intentionally caused harm to the plaintiff. It clarifies that if a plaintiff gives 30 days notice of a problem to the defendant, the defendant has 60 days to fix it. This doesn't result in a 90-day delay for litigation but does offer a critical opportunity to solve problems rather than litigate.

Language regarding the state of mind and liability of bystanders was significantly narrowed, redrafted, and clarified in order to assure that the provisions are consistent with the Year 2000 Information and Readiness Disclosure Act of 1998.

The economic loss rule was likewise rewritten and narrowed to reflect the current law in the majority of States.

Proportionate liability was significantly compromised to incorporate exceptions to the general rule to protect plaintiffs from suffering loss.

Class action language was revised and narrowed, and language respecting the effect of State law on contracts and the rules with respect to contract interpretation was also revised to address concerns that Senator WYDEN raised.

In other words, I believe we have gone a long way.

Mr. President, the opponents of this legislation will make several arguments. I respect those arguments. One will be that we are changing tort law—that we are somehow fundamentally changing the law despite the fact that this has a sunset provision in it of January 1, 2003.

Also, they will say it is not a big problem; it is not nearly as big a problem as you think it is; there are going to be suits dismissed; that the manufacturers and the high-tech community and the businesspeople are setting up a straw man here because it is not that huge an issue despite the estimates that there can be as much as $300 billion to $1 trillion taken out of the economy.

Let me quote from the Progressive Policy Institute backgrounder of March 1999. They state:

> As the millennium nears, the year 2000 computer problem poses a critical challenge to our economy. Tremendous investments are being made to fix Y2K problems with U.S. companies expected to spend more than $50 billion. However, these efforts could be hampered by a barrage of potential legislation as fear of liability may keep some businesses from effectively engaging in Y2K remediation efforts.

Trial attorneys across the country are actually preparing for the potential windfall. For those who doubt the emergence of such leviathan litigation, one only needs to listen to what is coming out of certain quarters of the legal community. At the American Bar Association annual convention in Toronto last August, a panel of experts predicted that the legal costs associated with Y2K will exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined. That is more than three times the total annual estimated cost of all civil litigation in the United States.

That is what was propounded at the American Bar Association convention in Toronto last August.

Mr. President, it isn't the Bank of America that is saying that. It isn't the high-tech community. It is the American Bar Association.

> Seminars on how to try Y2K cases are well underway, and approximately 500 law firms across the country have put together Y2K litigation teams to capitalize on the event. Also, several lawsuits have already been filed making trial attorneys confident that a large number of businesses, big and small, will end up in court as both a plaintiff and a defendant. Such overwhelming litigation would reduce investment and slow income growth for American workers.
>
> Indeed, innovation and economic growth will be stifled by the rapacity of strident litigators. In addition to the potentially huge costs of litigation, there is another unique element to the Y2K problem. In contrast to past cases of business liability where individual firms or even industries engaged in some wrongful and damaging practices, the Y2K problem potentially affects all aspects of the economy as it is for all intents and purposes a unique one-time event. It is best understood as an incomparable societal problem rooted in the early stages of our Nation's transformation to a digital economy. Applying some of the existing standards of litigation to such a distinct and communal problem is simply not appropriate.
>
> Legislation is needed to provide incentives for businesses to fix Y2K problems, to encourage resolution of Y2K conflicts outside of the courtroom, and to ensure that the problem is not exploited by untenable lawsuits.

The Progressive Policy Institute goes on to say at the end:

> In order to diminish the threat of burdensome and unwarranted litigation, it is essential that any legislation addressing Y2K liability do the following:
>
> Encourage remediation over litigation and the assignment of blame;
>
> Enact fair rules that reassure businesses;
>
> That honest efforts at remediation will be rewarded by limiting liability while enforcing contracts and punishing negligence;
>
> Promote alternative dispute resolution;
>
> And, finally discourage frivolous lawsuits while protecting avenues of redress for parties that suffer real injuries.

Mr. President, on those four principles we acted in this legislation, and then we moved back to, if not the principles of it, some of what, in my view, were the most desirable parts of the legislation on the nine major issues which I just described in our negotiations with Senator WYDEN and others. Then we even made concessions in two additional areas with Senator DODD. And now it is not enough.

Mr. WYDEN. Mr. President, will the Senator yield?

Mr. MCCAIN. Does the Senator from Oregon have a question?

Mr. WYDEN. I do. I think there is one other important point that needs to be made. It seems to me that the legislation as it stands now makes it very clear that what is really going to govern the vast majority of cases is the written contractual terms between businesses.

If you look at page 11 of the subcommittee report, it makes it very clear that the act doesn't apply to personal injuries or to wrongful deaths. What is going to apply are the written contractual terms between businesses.

As I recall, the chairman of the Commerce Committee thought originally that in this and other major changes there ought to be a Federal standard in this area. There was a concern that was, again, writing new law and tort law. The chairman decided to make it clear that it was going to be written in contractual terms that were going to govern these agreements between businesses.

What is the chairman's understanding of how that came about, and why those written contractual terms were important in this reform?

Mr. MCCAIN. I say to my friend from Oregon that he has pretty well pointed out that there were several standards which could be used for both legal as well as the sense of how the people who are involved in the Y2K situation are involved. To have one standard, I think, was clearly called for, although perhaps I would have liked to have seen a tougher standard. But the fact is that this was a process of how we develop legislation. We also wanted to respect the individual contracts, as the Senator from Oregon knows.

Mr. President, I just want to say again that my dear friend from South Carolina has been very patient, and I know that he wants to speak at some length. I appreciate both his compassion and commitment and knowledge of the issue.

We have tried to compromise. We will continue to try to compromise. We

are now reaching close to a point where the legislation would be meaningless.

I am all in favor of a process where amendments are proposed, where they are debated and voted on. I think that is the way we should do business.

If the Senator from South Carolina has a problem with this legislation, I hope he will propose an amendment to this legislation. I will be glad to debate it, and we will be glad to have votes.

It is important that we resolve this legislation. I would not like to see, nor do I think the people of this country deserve, a gridlock where blocking of any legislation to move forward on this issue takes place. I don't think that is fair. I don't think it is fair or appropriate on an issue of this magnitude of which time is of the essence. We can't have a blockage of this issue and take this legislation up several months from now.

I respect the views of others who oppose this legislation. But let's go through a legislative process. I am willing to stay here all day and all night to debate the amendments, whatever they may be. I don't want to introduce a cloture motion, because obviously that cuts off people's ability to debate this issue because of the timeframe and time limits involved in a cloture motion.

But I also urge my colleagues who oppose this legislation, let's not engage in extraneous amendments on minimum wage, or violence on TV, or guns, or anything else. That, frankly, in all due respect to my colleagues, is avoiding this issue. This issue needs to be addressed.

In the eyes of every American, there is a huge problem arising at 12:01, January 1 of the year 2000. We have an obligation to address that problem.

For us to now be sidetracked with other issues and extraneous amendments, or others, is doing a great disservice to those men and women, small businesses and large and medium size, which will be affected by this serious problem, of which, by the way, even with a select committee we really haven't gotten a good handle on the magnitude of the problem. It depends on what part of our economy, what part of government, et cetera.

But there is no one who alleges that there is no problem. It is our obligation to try to address this problem. Let's do it in an orderly fashion with debate, with amendments, and then vote on final passage.

I urge my colleagues to respect such a process.

UNANIMOUS-CONSENT AGREEMENT

Mr. MCCAIN. Mr. President, I ask unanimous consent when the Senate reconvenes at 2:15 it be in order for the Senate Chaplain to offer a prayer in honor of the moment of silence being observed in Colorado, and following the prayer the junior Senator from Colorado be recognized to speak, to be followed by the senior Senator from Colorado who, after some remarks, will offer a moment of silence.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the 12:30 recess be extended 10 minutes, until 12:40.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I will go right to the point with respect to the compromise. I have in hand a letter from Craig R. Barrett, the distinguished CEO of Intel. Without reading the entire letter, the consensus is that what they would really need is a settlement or compromise regarding four particular points. One is procedural incentives; another is with respect to the provisions of contracts, that they have specificity; third, threshold pleading provisions and the amount of damages in materiality of defects which would help constrain class action suits; and, of course, the matter of proportionality, or joint and several.

I contacted Mr. Grove and told him we would yield on three points, but we didn't want to get into tort law with a contract provision—all triable under the Uniform Commercial Code. He didn't think he could yield on that fourth one.

Since that time, I understand that the downtown Chamber of Commerce says they are not yielding at all with respect to the test in tort law.

My colleague from Oregon says there are nine points and that we have gotten together. That is garbage. That is not the case at all, I can say that right now.

They are determined to change the proof of neglect by ''the greater weight of the preponderance of evidence'' to ''clear and convincing.'' I thought that was compromise. Reviewing the McCain-Wyden amendment that is now under debate, Members will find on that page scratched out and written in, ''clear and convincing evidence.'' They want to change the burden in tort cases from ''the greater weight of the preponderance of evidence'' to ''clear and convincing.''

How can you do that when you do not have the elements before you? You do not have control of the manufacturer; you do not have control of the software. If you are like me and other professionals like our doctor friends or CPAs, they don't know those kinds of things. They have to do the best they can by the greater weight of the preponderance of evidence—not clear and convincing.

So they stick to punitive, they stick to clear and convincing, they stick to joint and several, but they come on the floor of the Senate and exclaim how reasonable they are and then allude, of course, to the trial lawyers and talk about campaign financing, but say as an aside, We don't want to get into it—as if the Senator from South Carolina is paid by trial lawyers to do this.

I represented corporate America, and I will list those companies. I was proud of the Electric and Gas. I was proud of the wholesale grocer, Piggly Wiggly firm. We had 121 stores. I was their chief counsel on an antitrust case which I took all the way to the U.S. Supreme Court. I won. I had good corporate clients, too. I am proud of trial lawyers. We don't have time for frivolous cases.

This downtown crowd will never see the courtroom. They sit there in the mahogany rooms with the Persian rugs. Their colleagues call and say, Let's get a continuance, I want to play golf this afternoon—the clock runs on billable hours. The clock is running and the clients never know the difference. And they pay $450 to $500 an hour.

The distinguished Senator from Ohio who sat in front of me, now a national hero, is indebted to a case for billable hours.

We know about downtown. I don't understand aspersions with respect to the trial bar—we are looking out for the injured parties.

I want these matters in the RECORD. The case is clear cut, in this Senator's mind. For example, I talked for about an hour in the office with the distinguished head of Intel, Andy Grove, some weeks back. I don't want anyone to be misled, he is for proportionality. That is explained in the letter. However, he said it wasn't a real problem.

I ask unanimous consent that an article in the March issue of Business Week entitled ''Be Bug-Free or Get Squashed'' be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Business Week, Mar. 1, 1999]

BE BUG-FREE OR GET SQUASHED—BIG COMPANIES MAY SOON DUMP SUPPLIERS THAT AREN'T Y2K-READY

Lloyd Davis is feeling squeezed. In 1998, his $2 million, 25-employee fertilizer-equipment business was buffeted by the harsh winds that swept the farm economy. This year, his Golden Plains Agricultural Technologies Inc. in Colby, Kan., is getting slammed by Y2K. Davis needs $71,000 to make his computer systems bug-free by Jan. 1. But he has been able to rustle up only $39,000. His bank has denied him a loan because—ironically—he's not Y2K-ready. But Davis knows he must make the fixes or lose business. ''Our big customers aren't going to wait much longer,'' he frets.

Golden Plains and thousands of other small businesses are getting a dire ultimatum from the big corporations they sell to: Get ready for Y2K, or get lost. Multinationals such as General Motors, McDonald's, Nike, and Deere are making the first quarter—or the second at the latest—the deadline for partners and vendors to prove they're bug-free. A recent survey by consultants Cap Gemini America says 69% of the 2,000 largest companies will stop doing business with companies that can't pass muster. The National Federation of Independent Business figures more than 1 million companies with 100 workers or less won't make the cut and as many as half could lose big chunks of business or even fail.

Weak Links. Cutting thousands of companies out of the supply chain might strain supply lines and could even crimp output. But most CEOs figure it'll be cheaper in the long run to avoid bugs in the first place.

Some small outfits are already losing key customers. In the past year, Prudential Insurance Co. has cut nine suppliers from its ''critical'' list of more than 3,000 core vendors, and it continues to look for weak links, says Irene Dec, vice-president for information systems at the company. At Citibank, says Vice-President Ravi Apte, ''cuts have already been made.''

Suppliers around the world are feeling the pinch. Nike Inc. has warned its Hong Kong vendors that they must prove they're Y2K ready by Apr. 1. In India, Kishore Padmanabhan, vice-president of Bombay's Tata Consultancy Services, says repairs are runing 6 to 12 months behind. In Japan, ''small firms are having a tough time making fixes and are likely to be the main source of any Y2K problems,'' says Akira Ogata, general research manager for Japan Information Service Users Assn. Foreign companies operating in emerging economies such as China, Malaysia, and Russia are particularly hard-pressed to make Y2K fixes. In Indonesia, where the currency has plummeted to 27% of its 1977 value, many companies still don't consider Y2K a priority.

A December, 1998 World Bank survey shows that only 54 of 139 developing countries have begun planning for Y2K. Of those, 21 are taking steps to fix problems, but 33 have yet to take action. Indeed, the Global 2000 Coordinating Group, an international group of more than 230 institutions in 46 countries, has reconsidered its December, 1998 promise to the U.N. to publish its country-by-country Y2K-readiness ratings. The problem: A peek at the preliminary list has convinced some group members that its release could cause massive capital flight from some developing countries.

Big U.S. companies are not sugar-coating the problem. According to Sun Microsystems CEO Scott G. McNealy, Asia is ''anywhere from 6 to 24 months behind'' in fixing the Y2K problem—one he says could lead to shortages of core computers and disk drives early next year. Unresolved, says Guy Rabbat, corporate vice-president for Y2K at Solectron Corp. in San Jose, Calif., the problem could lead to price hikes and costly delivery delays.

Thanks to federal legislation passed last fall allowing companies to share Y2K data to speed fixes, Sun and other tech companies, including Cisco Systems, Dell Computer, Hewlett-Packard, IBM, Intel, and Motorola, are teaming up to put pressure on the suppliers they judge to be least Y2K-ready. Their new High-Technology Consortium on Year 2000 and Beyond is building a private database of suppliers of everything from disk drives to computer-mouse housings. He says the group will offer technical help to laggard firms—partly to show good faith if the industry is challenged later in court. But ''if a vendor's not up to speed by April or May,'' Rabbat says ''it's serious crunch time.''

Warnings. Other industries are following suit. Through the Automotive Industry Action Group, GM and other carmakers have set Mar. 31 deadlines for vendors to become Y2K-compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts. Other companies are sending a warning to laggards—and shifting business to the tech-savvy. ''Y2K can be a great opportunity to clean up and modernize the supply chain,'' says Roland S. Boreham, Jr., chairman of the board of Baldor Electric Co, in Fort Smith, Ark.

In Washington, Senators Christopher S. Bond (R-Mo.) and Robert F. Bennett (R-Utah) have introduced separate bills to make it easier for small companies like Davis' to get loans and stay in business. And the World Bank has shelled out $72 million in loans and grants to Y2K-stressed nations, including Argentina and Sri Lanka. But it may be too little too late: AT&T alone has spent $900 million fixing its systems.

Davis, for one, is not ready to quit. ''I've survived tornadoes, windstorms, and drought,'' he says. ''We'll be damaged, yes, but we'll survive.'' Sadly, not everyone will be able to make that claim.

Mr. HOLLINGS. Through the Automotive Industry Action Group, GM and other carmakers have set a March 31 deadline for vendors to become Y2K compliant. In March, members of the Grocery Manufacturers of America will meet with their counterparts from the Food Marketing Institute to launch similar efforts. Other companies are sending warnings to laggards and shifting business, so the text-savvy Y2K can be a great opportunity to clean up and modernize the supply system.

The market is working. We pointed that out. In a report by none other than Bill Gates at the World Economic Forum, they believe the millennium bug, aside from some possible glitches in delivery and supply, may pose only modest problems. Mr. Gates talked about it not being a real problem.

I ask unanimous consent to have printed in the RECORD an article from the New York Times, dated April 12, entitled ''Lawsuits Related to Y2K Problem Start Trickling Into the Courts.''

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 12, 1999]

LAWSUITS RELATED TO Y2K PROBLEM START TRICKLING INTO THE COURTS

(By Barnaby J. Feder)

A trickle of new lawsuits in recent months is expanding the legal landscape of the Year 2000 computer problem. But so far, the cases offer little support for the dire predictions that courts will be choked by litigation over Y2K, as the problem is known.

Some major equipment vendors, including IBM, AT&T and Lucent Technologies Inc., for example, have joined the ranks of those being sued for not forewarning customers that equipment they sold in recent years cannot handle Year 2000 dates and for not supplying free upgrades.

A California suit claims that Circuit City Stores Inc., CompUSA Inc. and other mass-market retailers violated that state's unfair business practices law by not warning customers about Year 2000 problems in computers and other equipment they sold. And an Alabama lawyer sued the state of Alabama on behalf of two welfare recipients, asking that the state be ordered to set aside money to upgrade its computer systems to ensure that benefits will be delivered without interruption.

Despite such skirmishes, though, which lawyers say only offer hints of the wide variety of cases yet to come, there is no sign yet of the kind of high-stakes damage suits that some have projected could overwhelm courts with $1 trillion in claims.

In fact, while Congress and many state legislatures are suddenly awash in proposed laws meant to prevent such a tidal wave, many lawyers actively involved with Year 2000 issues now question just how big the litigation threat really is.

''There was more reason to be alarmed a year ago,'' said Wynne Carvill, a partner at Thelen, Reid & Priest in San Francisco, one of the first law firms to devote major resources to Year 2000. ''People are finding things to fix but not many that would shut them down.''

The work and the litigation stems from the practice in older computers and software programs of using two digits to denote the year in a date; some mistakenly read next year's ''00'' as meaning 1900, and others do not recognize it as a valid number.

Somewhere between 50 and 80 cases linked to the Year 2000 problem have been filed so far, according to various estimates. The vast majority focus on whether hardware and software vendors are obligated to pay for fixing or replacing equipment and programs that malfunction when they encounter Year 2000 dates.

When such cases involve consumer products, a key issue has been whether lawsuits could be filed before any malfunctions have actually occurred. Plaintiff's lawyers have likened the situation to a car known to have a safety hazard; Detroit would be expected to take the initiative, send out recall notices to car owners and pay for the fix before an accident occurred, they say.

But in the major rulings so far, courts in California and New York have concluded that the law in those states does not treat the fast-changing, low-cost world of consumer software like cars.

Actions against Intuit Inc., the manufacturer of Quicken, a popular financial package, have been dismissed because consumers were unable to demonstrate that they had already been damaged.

Intuit has promised to make free software patches available before next Jan. 1, but is fighting efforts by plaintiffs' lawyers in California to force the company to compensuate consumers who dealt with the problem by purchasing upgrades before learning of the free fix.

The case against mass retailers, filed in Contra Costa County, Calif., in January, argues that the stores violated a state consumer protection statute by selling a wide array of software, including Windows 98 and certain versions of Quicken, Microsoft Works, Peachtree Accounting and Norton Anti-Virus, without warning customers about potential Year 2000 problems or supplying free patches from the manufacturers.

In cases where consumers were told of software defects, the complaint contends, they were sometimes told that the least expensive solution was to buy an upgrade from the store, even though the manufacturers had a stated policy of providing free patches.

The complaint also cites hardware with Year 2000 defects that was sold in the stores without warning, including equipment from Compaq Computer, NEC and Toshiba from 1995 to 1997. it also contends that as recently as this year, the stores have been packaging a wide variety of new computers with software that contains Year 2000 defects.

The stores have moved to dismiss the suit, arguing among other things that failing to warn consumers about defects does not amount to misleading them under the California law.

Many other cases have involved business software, services and computer equipment, but lawyers describe them largely as ''plain vanilla'' contract disputes.

The first case to result in a settlement paying damages to a plaintiff involved Produce Palace International, a Warren, MI., grocery that had complained that its business had been repeatedly interrupted by the failure of a computerized checkout scanning system to read credit cards expiring in the Year 2000. In the settlement, reached last November, the vendor, TEC America Inc., an Atlanta-based unit of the TEC Corp. of Japan, paid Produce Palace $250,000.

Several software manufacturers have settled suits on terms that provide free upgrades and payments to the lawyers that sued them. Last month, for example, a magistrate for U.S. District Court in New Jersey approved a settlement that provided up to $46 million in upgrades and $600,000 in cash to doctors who had purchased billing management software from Medical Manager Corp.

That is not the end of Year 2000 problems for Medical Manager, which is based in Tampa, FL. It still has to contend with a shareholder lawsuit filed in U.S. District Court in Florida last fall after its stock tumbled on the news of the New Jersey class-action suit. Several other shareholder suits have been filed against other software companies based on claims linking Year 2000 problems to stock declines.

In general, defendants have fared well in Year 2000 business software cases. Courts have strictly interpreted contracts and licenses to prevent plaintiffs from collecting on claims for upgrades or services unless they were specifically called for in the contract.

In December, an Ohio court threw out a potential class-action claim against Macola Inc., a software company, contending that early versions of its accounting program with Year 2000 defects should be upgraded for free because the company advertised it as ''software you'll never outgrow.''

The court ruled that anyone actually licensing the software accepted the explicit and very limited terms of the warranty as all that Macola had legally promised. That decision has been appealed.

One closely watched case involves the Cincinnati Insurance Co.'s request that a U.S. District Court in Cedar Rapids, Iowa, declare that the company is not obligated to defend or reimburse a client that has been sued on an accusation that it failed to provide hospital management software free of Year 2000 defects.

It is the first case to raise the question of whether insurance companies may be ultimately liable for much of the hundreds of billions spent on Year 2000 repairs, if not damages from breakdowns in the future. But lawyers say the actual insurance policy at issue may not cover the crucial years in the underlying suit against Cincinnati Insurance's client. That wrinkle, they say, could let the insurer off the hook without the court's shedding light on the larger issues.

''The results in the initial cases have dampened the fervor somewhat,'' said Charles Kerr, a New York lawyer who heads the Year 2000 section of the Practicing Law Institute, a legal education group. ''Legislation could change the landscape dramatically.''

Many lawyers say the momentum for some kind of action in Congress looks unstoppable. Seven states have already barred Year 2000 damage suits against themselves and similar proposals were filed in 30 other legislatures this year. Some states have already passed bills limiting private lawsuits as well. A recent example, signed last Tuesday in Colorado, gives businesses that attempt to address their Year 2000 risks stronger defenses against lawsuits; it also bans punitive damages as a remedy in such litigation.

Mr. HOLLINGS. I ask unanimous consent to have printed in the RECORD an article entitled ''Liability for the Millennium Bug'' from the New York Times, dated April 26.

The being no objection, the article was ordered to be printed in the RECORD, as follows:

[The New York Times, Apr. 26, 1999]

LIABILITY FOR THE MILLENNIUM BUG

With 249 days to go until the year 2000, many experts are alarmed and others are only mildly concerned about the danger of computer chaos posed by the so-called millennium bug. One prediction seems safe, however. Whatever the damage, there will be lots of lawsuits. In anticipation, some in Congress, mainly Republicans, want legislation to limit the right of people and businesses to sue in the event of a Y2K disaster. Their reasoning is that the important thing is to get people to fix their computer problems now rather than wait and sue. But the legislation is misguided and potentially unfair. It could even lessen the incentive for corrective action.

As most people know by now, the millennium bug arises from the fact that chips and software have been coded to mark the years with only two digits, so that when the date on computers moves over to the year 2000, the computers may go haywire when they register 1900 instead. A recent survey by a Senate Special Committee on the Year 2000 found that while many Government agencies and larger companies have taken action to correct the bug, 50 percent of the country's small- and medium-size businesses have not. The failure is especially worrisome in the health sector, with many hospitals and 90 percent of doctors' offices unprepared.

If hospitals, supermarkets, utilities and small businesses are forced to shut down because of computer problems, lawsuits against computer and software manufacturers will certainly result. Some experts estimate that liability could reach $1 trillion. Legislation to protect potential defendants, sponsored by Senator John McCain of Arizona, is expected to be voted on in the Senate this week. The bill would impose caps on punitive damages and tighter standards of proof of liability, and provide for a 90-day waiting period in which the sued company would be allowed to cure the problem. The bills would also suspend ''joint and several liability,'' under which wealthy defendants, like chip or software companies, could have to pay the full cost of damages if other parties could not be sued because they were overseas or unable to pay.

These provisions would curtail or even suspend a basic protection, the right to sue, that consumers and businesses have long enjoyed. The White House and the Congressional Democratic leadership are right to view such a step as unnecessary. Existing liability laws offer plenty of protections for businesses that might be sued. Proponents of the legislation argue, for example, that companies that make good-faith efforts to alert customers of Y2K problems should not be punished if the customers ignore the warning, or if the companies bear only a small portion of the responsibility. But state liability laws already allow for these defenses. The larger worry is that the prospect of immunity could dissuade equipment and software makers from making the effort to correct the millennium-bug problem.

It might make sense to have a 90-day ''cooling off'' period for affected businesses to get help to fix as many problems as possible without being able to file lawsuits. But it would be catastrophic if stores, small businesses and vital organizations like hospitals and utilities were shut down for 90 days. They should have the same recourse to relief from the parties that supplied them with faulty goods that any other customer has.

Government can certainly help by providing loans, subsidies and expertise to computer users and, perhaps, by setting up special courts to adjudicate claims. Congress can also clarify the liability of companies once it becomes clear how widespread the problem really is. But before the new year, the Government should not use the millennium bug to overturn longstanding liability practices. A potential crisis is no time to abrogate legal rights.

Mr. HOLLINGS. This article says a potential crisis is no time to abrogate legal rights. They come out in opposition of this particular legislation.

My colleague from Oregon says that has all been cleaned up by his particular amendment. Not at all. I ask unanimous consent an article from the Oregonian, dated March 22, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

Y2K ESCAPE CLAUSE

(By Paul Gillin)

Faced with an almost certain flood of year 2000-related litigation, industry groups are banding together to try to limit their liability. Users should oppose those efforts with all their power. This legal debate is tricky because the combatants are equally opportunistic and unpleasant. On one side is the Information Technology Association of America, in alliance with various other industrial groups. They have proposed a law that, among other things, would limit punitive damages in year 2000 cases to triple damages and give defendants 90 days to fix a problem before being named in a suit. On the other side are lawyers' associations that anticipate a bonanza of fees, even if the year 2000 problem doesn't turn out to be that serious.

Hard as it is to find a good guy, you have to give the lawyers their due. Year 2000 may be their opportunity, but it isn't their problem.

The problem belongs—hook, line and sinker—to the vendors that capriciously ignored warnings from as long ago as the late '70s and that now are trying to buy a free pass from Congress. It's appalling to look at the list of recent software products that have year 2000 problems. It has been five years since year 2000 awareness washed over the computer industry, which makes it difficult to believe that products such as Office 97 aren't fully compliant.

The industry players behind this legislation package are the same ones that helped push through the Trojan horse called the Year 2000 Information and Readiness Disclosure Act last October. That bill provides vendors with a cloak of legal protection based on past statements about efforts to correct the problem. The industry players have tried to color the bills as reasonable hedges against frivolous lawsuits that will sap the legal system post-new year. Yet defendants in personal injury and class-action suits enjoy no such protections.

Vendors have had plenty of time to prepare for 2000. The fact that some were more preoccupied with quarterly earnings and stock options than in protecting their customers is no excuse for giving them a get-out-of-jail-free card now.

Mr. HOLLINGS. One line in the article reads,

Sponsoring GOP Senators say this bill would provide incentives for solving technical issues before failures occur, but in fact it does just the opposite. It eliminates the threat of lawsuits as a negative incentive for companies that might otherwise neglect their responsibilities in addressing their Y2K problems or reimbursing consumers for their losses. Federal legislation that overrides

State courts is a serious infringement on States' rights that merits only rare application, while a massive computer meltdown meets that criteria. Congress passed the tightly-crafted bipartisan bill to help companies work through the problem.

As you can see from the Business Week article, they worked through that problem.

Mr. President, there was some interesting testimony that we received before our committee a few weeks back from a Dr. Robert Courtney. It is talking about the cases.

Incidentally, I ask unanimous consent to print in the RECORD a letter of yesterday from the Honorable Ronald N. Weikers.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PHILADELPHIA, PA, *April 26, 1999.*

Re Y2K Legislation Unnecessary.

Mr. MOSES BOYD,

Office of the Honorable Fritz Hollings, Washington, DC.

DEAR MR. BOYD: Thank you for speaking with me earlier. Thirteen (13) of the 44 Y2K lawsuits that have been filed to date have been dismissed entirely or almost entirely. Twelve (12) cases have been settled for moderate sums or for no money. The legal system is weeding out frivolous claims, and Y2K legislation is therefore unnecessary.

Thirty-five (35) cases have been filed on behalf of corporate entities, such as health care providers, retailers, manufacturers, service providers and more. Nine (9) cases have been filed on behalf of individuals. This trend will continue. Thus, the same corporations that are lobbying for Y2K legislation may be limiting their own rights to recover remediation costs or damages.

I have studied the Y2K problem carefully from the legal perspective, and have written a book entitled ''Litigating Year 2000 Cases'', which will be published by West Group in June. I frequently write and speak about this subject. I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation. Feel free to call me, should you have any questions. Thank you very much.

Very truly yours,

RONALD N. WEIKERS.

Mr. HOLLINGS. This letter is addressed to my staff, Mr. Moses Boyd. It says:

Dear Mr. Boyd: Thank you for speaking with me earlier. Thirteen (13) of the 44 Y2K lawsuits that have been filed to date have been dismissed entirely or almost entirely. Twelve (12) cases have been settled for moderate sums or for no money. The legal system is weeding out frivolous claims, and Y2K legislation is therefore unnecessary.

Thirty-five (35) cases have been filed on behalf of corporate entities, such as health care providers, retailers, manufacturers, service providers, and more. Nine (9) cases have been filed on behalf of individuals. This trend will continue. Thus, the same corporations that are lobbying for Y2K legislation may be limiting their own rights to recover remediation costs or damages.

I have studied the Y2K problem carefully from the legal perspective, and have written a book entitled ''Litigating Year 2000 Cases,'' which will be published by West Group in June. I frequently write and speak about the subject. I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation. Feel free to call me, should you have any questions. Thank you very much. Very truly yours, Ronald N. Weikers, Attorney at Law, Philadelphia, Pennsylvania.

Mr. President, there are things in here to emphasize. One is: ''I do not represent any clients that have an interest in the passage or defeat of any proposed Y2K legislation.'' And I emphasize that his book will be published by the West Group in June. The month after next, in about 5 or 6 weeks, this book will be coming out. I can tell you as a practicing attorney that the West Group is not going to publish any partisan political book or edition. It would not sell to the lawyers on both sides. We like to look up and find the authorities, not political arguments. The West Group is in that particular field professionally of documenting in a research fashion the matter of Y2K cases in this particular interest. I can tell you right now they have pretty good evidence about what has been occurring.

What has been occurring is best evidenced by the testimony of Dr. Robert Courtney before the Committee on Commerce, Science, and Transportation on February 9 on S. 96, the Y2K Act. I ask unanimous consent that his testimony be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TESTIMONY OF DR. ROBERT COURTNEY AT THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION HEARING ON S. 96, THE Y2K ACT, FEBRUARY 9, 1999

Good morning, my name is Bob Courtney, and I am a doctor from Atlantic County, New Jersey. It is an honor for me to be here this morning, and I thank you for inviting me to offer testimony on the Y2K issue.

As a way of background, I am an ob/gyn and a solo practitioner. I do not have an office manager. It's just my Registered Nurse, Diane Hurff, and me, taking care of my 2000 patients.

These days, it is getting tougher and tougher for those of us who provide traditional, personalized medical services. The paperwork required by the government on one hand, and by insurance companies on the other is forcing me to spend fewer hours doing what I do best—taking care of patients and delivering their babies.

But it was a Y2K problem which recently posed a serious threat to my practice, and that is why I am here this morning.

As a matter of clarification, although I am a doctor, I am not here to speak on behalf of the American Medical Association. Although I am also a small businessman, I am not here to speak on behalf of the Chamber of Commerce. I cannot tell you who these organizations feel about the legislation before the Committee. But I can tell you how it would have affected my practice and my business.

I am one of the lucky ones. While a potential Y2K failure impacted my practice, the computer vendor that sold me the software system and I were able to reach an out-of-court settlement which was fair and expedient. From what my attorney, Harris Pogust, who is here with me today tells me, I doubt I would have been so lucky had this legislation been in effect.

In 1987, I purchased a computer system from Medical Manager, one of the leading medical systems providers in the country. I used the Medical Manager system for tracking surgery, scheduling due dates and billing. The system worked well for me for ten years, until the computer finally crashed from lack of sufficient memory.

In 1996, I replaced my old system with a new, state of the art pentium system from Medical Manager for $13,000. This was a huge investment for a practice of my size.

I remember joking with the computer salesman at the time that this was a big purchase for me, and that I was counting on this system to last as long as the last one did.

I remember the salesman telling me that he was sure that I would get at least ten years out of it. He showed me a list of how many of his local customers had used the Medical Manager for longer than ten years.

And, the salesman pointed me to this advertising brochure put out by Medical Manager. It states that their product would provide doctors with ''the ability to manage [their] future.''

In truth, I never asked the salesman about whether the new system that I was buying was Y2K compliant. I honestly did not know even to ask the question. After all, I deliver babies. I don't program computers. Based on the salesman's statements and the brochure, I assumed the system would work long into the future. After all, he had promised me over ten years' use, which would take me to 2006.

But just one year later, I received a form letter from Medical Manager telling me that the system I had just purchased had a Y2K problem. It was a problem that would make it impossible for me to schedule due dates or handle my administrative tasks—as early as 1999.

Medical Manager also offered to fix the problem that they had created—but for $25,000.

I was outraged, as I suspect anyone sitting around this table would be. The original system had cost me $15,000 when I purchased it in 1986. The upgraded system cost me $13,000 in 1996. Now, a year later, they wanted another $25,000. They knew when they sold me the $13,000 system that it would need this upgrade—but of course, they didn't tell me.

I wrote back to the company that I fully expected them to fix the problem for free, since I had just bought the system from them and I had been promised that it would work long into the future.

The company ignored my request, however, and several months later, sent me an estimate for fixing the problem—again, for over $25,000.

At this point, I was faced with a truly difficult dilemma. My practice depends on the use of a computer system to track my patients' due dates, surgeries and billings—but I did not have $25,000 to pay for an upgrade. Additionally, I was appalled at the thought of having to pay Medical Manager for a problem that they had created and should have anticipated. If I had to pay that $25,000, that would force me to drop many of my indigent patients that I now treat for free.

Since Medical Manager insisted upon charging me for the new system, and because my one year-old system was no longer dependable, I retained an attorney and sued Medical Manager to fix or replace my computer system at their cost.

Within two months of filing our action, Medical Manager offered to settle by providing all customers who bought a non-Y2K compliant system from them after 1990 with a free upgrade that makes their systems Y2K compliant by utilizing a software ''patch.''

This settlement gave me what I wanted from Medical Manager—the ability to use my computer system as it was meant to be used. To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought

my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

Additionally, even Medical Manager has stated that it was pleased with the settlement. According to the Medical Manager president who was quoted in the American Medical News, ''[f]or both our users and our shareholders, the best thing was to provide a Y2K solution. This is a win for our users and a win for us.'' [pick up article and display to Senators]

I simply do not see why the rights of doctors and other small businesses to recover from a company such as Medical Manager should be limited—which is what I understand this bill would do. Indeed, my attorney tells me that if this legislation had been in effect when I bought my system, Medical Manager would not have settled. I would still be in litigation, and might have lost my practice.

As an aside, at roughly the same time I bought the non-compliant system from Medical Manager, I purchased a sonogram machine from ADR. That equipment was Y2K compliant. The Salesman never told me it was compliant. It was simply built to last. Why should we be protecting the vendors or manufacturers of defective products rather than rewarding the responsible ones?

Also, as a doctor, I also hope the Committee will look into the implications of this legislation for both patient health and potential medical malpractice suits. This is an issue that many doctors have asked me about, and that generates considerable concern in the medical community.

In sum, I do appreciate this opportunity to share my experiences with the Committee. I guess the main message I would like to leave you with is that Y2K problems affect the lives of everyday people like myself, but the current legal system works. Changing the equation now could give companies like Medical Manager an incentive to undertake prolonged litigation strategies rather than agree to speedy and fair out-of-court settlements.

I became a doctor, and a sole practitioner, because I love delivering babies. I give each of my patients my home phone number. I am part of their lives. This Y2K problem could have forced me to give all that up. It is only because of my lawyer, and the court system, that I can continue to be the doctor that I have been. This bill, and others like it, would take that away from me. Please don't do that. Leave the system as it is. The court worked for me—and it will work for others.

Thank you.

Mr. HOLLINGS. Mr. President, he is a doctor from Atlantic County, NJ. I will not read it in its entirety, but he said:

. . . But it was a Y2K problem which recently posed a serious threat to my practice, and that is why I am here this morning.

. . . Although I am a doctor, I am not here to speak on behalf of the [AMA]. Although I am a small businessman, I am not here to speak on behalf of the Chamber of Commerce. I cannot tell you how these organizations feel. . . . But I can tell you how it would have affected my business.

I am one of the lucky ones. While a potential Y2K failure impacted my practice, the computer vendor that sold me the software system and I were able to reach an out-of-court settlement which was fair and expedient.

. . . In 1987, I purchased a computer system from Medical Manager, one of the leading medical systems providers in the country. I used the Medical Manager system for tracking surgery, scheduling due dates and billing.

Incidentally, that is very important for a doctor. If he gets sued for malpractice, it might be based on his computer and not on his professional treatment.

I go on to read:

. . . The system worked well for me for ten years, until the computer finally crashed from lack of sufficient memory.

In 1996, I replaced my old system with a new, state of the art pentium system from Medical Manager for $13,000. This was a huge investment for a practice my size.

I remember joking with the computer salesman at the time that this was a big purchase for me, and I was counting on this system to last as long as the last one did—

which was over 10 years—

I remember the salesman telling me that he was sure that I would get at least ten years out of it. He showed me a list of how many of his local customers had used the Medical Manager for longer than ten years.

Jumping down:

. . . one year later, I received a form letter from Medical Manager telling me the system I had just purchased had a Y2K problem. It was a problem that would make it impossible for me to schedule due dates or handle my administrative tasks—as early as 1999.

Medical Manager also offered to fix the problem that they had created—but for $25,000.

He only paid $13,000.

I was outraged, as I suspect anyone sitting around this table would be. The original system had cost me $15,000 when I purchased it in 1986. The upgraded system cost me $13,000 in 1996. Now, a year later, they wanted another $25,000. They knew when they sold me the $13,000 system that it would need this upgrade—but, of course, they didn't tell me.

The company ignored my request, however, and several months later, sent me an estimate for fixing the problem—again, for $25,000.

But he said he didn't have the $25,000.

. . . I was appalled at the thought of having to pay Medical Manager for a problem that they had created and should have anticipated.

. . . I had to pay that $25,000. . .[so] I retained an attorney and sued Medical Manager [under the present law].

. . . To my great satisfaction, the legal system worked for me and the thousands of other doctors who bought Medical Manager's products since 1990. In fact, since I brought my claim against Medical Manager, I have received numerous telephone calls and letters from doctors across the country who had similar experiences.

I can go down the letter, Mr. President. The point is that he settled the case that was for some $1,455,000 for 17,000 doctors.

I ask unanimous consent to print in the RECORD a note from Jack Emery of the American Medical Association.

There being no objection, the note ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION

Memo to: Washington Representatives, National Medical Specialty Societies
From: Jack Emery 202/789–7414
Date: March 4, 1999
Subject: Legislation Addressing Y2K Liability

Several specialties have called to ask about the American Medical Association's (AMA) position on H.R. 455 and S. 461. The AMA is opposed to this legislation which would limit Y2K liability. I've attached a copy of testimony the AMA presented to the Ways and Means Committee last week on Y2K. I call your attention to page nine of that testimony where we address our specific concerns with this type of legislation.

We understand that Barnes Kaufman, a PR firm, is attempting to schedule a meeting on this issue later this week to mount opposition to such legislation. Someone from this office will attend the meeting whenever it is scheduled.

Mr. HOLLINGS. Mr. President, this is dated March 4, 1999:

Several specialities have called to ask about the American Medical Association's (AMA) position on H.R. 455 and S. 461. The AMA is opposed to this legislation which would limit Y2K liability.

I've attached a copy of testimony the AMA presented to the Ways and Means Committee last week on Y2K. I call your attention to page nine of that testimony where we address our specific concerns with this type of legislation.

I ask unanimous consent to have printed in the RECORD that testimony which was prepared before the committee on the House side.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF DONALD J. PALMISANO, M.D., J.D., MEMBER, BOARD OF DIRECTORS, AND CHAIR, DEVELOPMENT COMMITTEE, NATIONAL PATIENT SAFETY FOUNDATION, AND MEMBER, BOARD OF TRUSTEES, AMERICAN MEDICAL ASSOCIATION

(Testimony Before the House Committee on Ways and Means—Hearing on the Year 2000 Conversion Efforts and Implications for Beneficiaries and Taxpayers, February 24, 1999)

Mr. Chairman and members of the Committee, my name is Donald J. Palmisano, MD, JD. I am a member of the Board of Trustees of the American Medical Association (AMA), a Board of Directors member of the National Patient Safety Foundation (NPSF) and the Chair of the Development Committee for the same foundation. I also practice vascular and general surgery in New Orleans, Louisiana. On behalf of the three hundred thousands physician and medical student members of the AMA, I appreciate the chance to comment on the issue of year 2000 conversion efforts and the implications of the year 2000 problem for health care beneficiaries.

INTRODUCTION

The year 2000 problem has arisen because many computer systems, software and embedded microchips cannot properly process date information. These devices and software can only read the last two digits of the ''year'' field of data; the first two digits are presumer to be ''19.'' Consequently, when data requires the entry of a date in the year 2000 or later, these systems, devices and software will be incapable of correctly processing the data.

Currently, nearly all industries are in some manner dependent on information technology, and the medical industry is no exception. As technology advances and its contributions mount, our dependency and consequent vulnerability become more and more evident. The year 2000 problem is revealing to us that vulnerability.

By the nature of its work, the medical industry relies tremendously on technology, on computer sytems—both hardware and software, as well as medical devices that have embedded microchips. A survey conducted last year by the AMA found that almost 90% of the nation's physicians are

using computers in their practices, and 40% are using them to log patient histories.[1] These numbers appear to be growing as physicians seek to increase efficiency and effectiveness in their practices and when treating their patients.

Virtually every aspect of the medical profession depends in some way on these systems—for treating patients, handling administrative office functions, and conducting transactions. For some industries, software glitches or even system failures, can, at best, cause inconvenience, and at worst, cripple the business. In medicine, those same software or systems malfunctions can, much more seriously, cause patient injuries and deaths.

PATIENT CARE

Assessing the current level of risk attributable specifically to the year 2000 problem within the patient care setting remains problematic. We do know, however, that the risk is present and it is real. Consider for a minute what would occur if a monitor failed to sound an alarm when a patient's heart stopped beating. Or if a respirator delivered ''unscheduled breaths'' to a respirator-dependent patient. Or even if a digital display were to attribute the name of one patient to medical data from another patient. Are these scenarios hypothetical, based on conjecture? No. Software problems have caused each one of these medical devices to malfunction with potentially fatal consequences.[2] The potential danger is present.

The risk of patient injury is also real. Since 1986, the FDA has received more than 450 reports identifying software defects—not related to the year 2000—in medical devices. Consider one instance—when software error caused a radiation machine to deliver excessive doses to six cancer patients; for three of them the software error was fatal.[3] We can anticipate that, left unresolved, medical device software malfunctions due to the millennium bug would be prevalent and could be serious.

Medical device manufacturers must immediately disclose to the public whether their products are Y2K compliant. Physicians and other health care providers do not have the expertise or resources to determine reliably whether the medical equipment they possess will function properly in the year 2000. Only the manufacturers have the necessary in-depth knowledge of the devices they have sold.

Nevertheless, medical device manufacturers have not always been willing to assist end-users in determining whether their products are year 2000 compliant. Last year, the Acting Commissioner of the FDA, Dr. Michael A. Friedman, testified before the U.S. Senate Special Committee on the Year 2000 Problem that the FDA estimated that only approximately 500 of the 2,700 manufacturers of potentially problematic equipment had even responded to inquiries for information. Even when vendors did respond, their responses frequently were not helpful. The Department of Veterans Affairs reported last year that of more than 1,600 medical device manufacturers it had previously contacted, 233 manufacturers did not even reply and another 187 vendors said they were not responsible for alterations because they had merged, were purchased by another company, or were no longer in business. One hundred two companies reported a total of 673 models that were not compliant but should be repaired or updated this year.[4] Since July 1998, however, representatives of the manufacturers industry have met with the Department of Veterans Affairs, the FDA, the AMA and others to discuss obstacles to compliance and have promised to do more for the health care industry.

ADMINISTRATIVE

Many physicians and medical centers are also increasingly relying on information systems for conducting medical transactions, such as communicating referrals and electronically transmitting prescriptions, as well as maintaining medical records. Many physician and medical center networks have even begun creating large clinical data repositories and master person indices to maintain, consolidate and manipulate clinical information, to increase efficiency and ultimately to improve patient care. If these information systems malfunction, critical data may be lost, or worse—unintentionally and incorrectly modified. Even an inability to access critical data when needed can seriously jeopardize patient safety.

Other administrative aspects of the Y2K problem involve Medicare coding and billing transactions. In the middle of last year, HCFA issued instructions through its contractors informing physicians and other health care professionals that electronic and paper claims would have to meet Y2K compliance criteria by October 1, 1998. In September 1998, however, HCFA directed Medicare carriers and fiscal intermediaries not to reject or ''return as unprocessable'' any electronic media claims for non-Y2K compliance until further notice. That notice came last month. In January 1999, HCFA instructed both carriers and fiscal intermediaries to inform health care providers, including physicians, and suppliers that claims received on or after April 5, 1999, which are not Y2K compliant will be rejected and returned as unprocessable.

We understand why HCFA is taking this action at this time. We genuinely hope, however, that HCFA, to the extent possible, will assist physicians and other health care professionals who have been unable to achieve Y2K compliance by April 5. We have been informed that HCFA has decided to grant physicians additional time, if necessary, for reasonable good faith exceptions, and we strongly support that decision. Physicians are genuinely trying to comply with HCFA's Y2K directives. In fact, HCFA has already represented that 95% of the electronic bills being submitted by physicians and other Medicare Part B providers already meet HCFA's Y2K filing criteria. HCFA must not withhold reimbursement to, in any sense, punish those relatively few health care professionals who have lacked the necessary resources to meet HCFA's Y2K criteria. Instead, physicians and HCFA need to continue to work together to make sure that their respective data processing systems are functioning properly for the orderly and timely processing of Medicare claims data.

We also hope that HCFA's January 1999 instructions are not creating a double standard. According to the instructions. HCFA will reject non-Y2K compliant claims from physicians, other health care providers and suppliers. HCFA however has failed to state publicly whether Medicare contractors are under the same obligation to meet the April 5th deadline. Consequently, after April 5th non-compliant Medicare contractors will likely continue to receive reimbursement from HCFA while physicians, other health care providers, and suppliers that file claims not meeting HCFA's Y2K criteria will have their claims rejected. this inequity must be corrected.

Medicare administrative issues are of critical importance to patients, physicians, and other health care professionals. In one scenario that took place in my home state of Louisiana, Arkansas Blue Cross & Blue Shield, the Medicare claims processor for Louisiana, implemented a new computer system—intended to be Y2K compliant—to handle physicians' Medicare claims. Although physicians were warned in advance that the implementation might result in payment delays of a couple of weeks, implementation problems resulted in significantly longer delays. For many physicians, this became a real crisis. Physicians who were treating significant numbers of Medicare patients immediately felt significant financial pressure and had to scramble to cover payroll and purchase necessary supplies.[5]

We are encouraging physicians to address the myriad challenges the Y2K dilemma poses for their patients and their practices, which include claims submission requirements. The public remains concerned however that the federal government may not achieve Y2K compliance before critical deadlines. An Office of Management and Budget report issued on December 8, 1998, disclosed that the Department of Health and Human Services is only 49% Y2K compliant.[6] In a meeting last week, though, HCFA representatives stated that HCFA has made significant progress towards Y2K compliance, specifically on mission critical systems. In any case, we believe that HCFA should lead by example and have its systems in compliance as quickly as possible to allow for adequate parallel testing with physician claims submission software and other health care professionals. Such testing would also allow for further systems refinements, if necessary.

REIMBURSEMENT AND IMPLEMENTATION OF BBA

To shore up its operations, HCFA has stated that it will concentrate on fixing its internal computers and systems. As a result, it has decided not to implement some changes required under the Balanced Budget Act (BBA) of 1997, and it plans to postpone physicians' payment updates from January 1, 2000, to about April 1, 2000.

In the AMA's view, the Y2K problem is and has been an identifiable and solvable problem. Society has known for many years that the date problem was coming and that individuals and institutions needed to take remedial steps to address the problem. There is no justification for creating a situation where physicians, hospitals and other providers now are being asked to pay for government's mistakes by accepting a delay in their year 2000 payment updates.

HCFA has indicated to the AMA that the delay in making the payment updates is not being done to save money for the Medicare Trust Funds. In addition, the agency has said that the eventual payment updates will be conducted in such a way as to fairly reimburse physicians for the payment update they should have received. In other words, the updates will be adjusted so that total expenditures in the year 2000 on physician services are no different than if the updates had occurred on January 1.

We are pleased that HCFA has indicated a willingness to work with us on this issue. But we have grave concerns about the agency's ability to devise a solution that is equitable and acceptable to all physicians.

Also, as it turns out, the year 2000 is a critical year for physicians because several important BBA changes are scheduled to be made in the resource-based relative value scale (RMRVS) that Medicare uses to determine physician payments. This relative value scale is comprised of three components: work, practice expense, and malpractice expense. Two of the three—practice expense and malpractice—are due to undergo Congressionally-mandated modifications in the year 2000.

In general, the practice expense changes will have different effects on the various specialities. Malpractice changes, to some modest degree, would offset the practice expense

See footnotes end of article.

redistributions. To now delay one or both of these changes will have different consequences for different medical specialties and could put HCFA at the eye of storm that might have been avoided with proper preparation.

To make matters worse, we also are concerned that delays in Medicare's reimbursement updates could have consequences far beyond the Medicare program. Many private insurers and state Medicaid agencies base their fee-for-service payment systems on Medicare's RBRVS. Delays in reimbursement updates caused by HCFA may very well lead other non-Federal payers to follow Medicare's lead, resulting in a much broader than expected impact on physicians.

CURRENT LEVEL OF PREPAREDNESS

Assessing the status of the year 2000 problem is difficult not only because the inventory of the information systems and equipment that will be affected is far from complete, but also because the consequences of noncompliance for each system remain unclear. Nevertheless, if the studies are correct, malfunctions in noncompliant systems will occur and equipment failures can surely be anticipated. The analyses and surveys that have been conducted present a rather bleak picture for the health care industry in general, and physicians' practices in particular.

The Odin Group, a health care information technology research and advisory group, for instance, found from a survey of 250 health care managers that many health care companies by the second half of last year still had not developed Y2K contingency plans.[7] The GartnerGroup has similarly concluded, based on its surveys and studies, that the year 2000 problem's ''effect on health care will be particularly traumatic . . . [l]ives and health will be at increased risk. Medical devices may cease to function.''[8] In its report, it noted that most hospitals have a few thousand medical devices with microcontroller chips, and larger hospital networks and integrated delivery systems have tens of thousands of devices.

Based on early testing, the GartnerGroup also found that although only 0.5–2.5 percent of medical devices have a year 2000 problem, approximately 5 percent of health care organizations will not locate all the noncompliant devices in time.[9] It determined further that most of these organizations do not have the resources or the expertise to test these devices properly and will have to rely on the device manufacturers for assistance.[10]

As a general assessment, the GartnerGroup concluded that based on a survey of 15,000 companies in 87 countries, the health care industry remains far behind other industries in its exposure to the year 2000 problem.[11] Within the health care industry, the subgroups which are the furthest behind and therefore at the highest risk are ''medical practices'' and ''in-home service providers.''[12] The GartnerGroup extrapolated that the costs associated with addressing the year 2000 problem for each practice group will range up to $1.5 million per group.[13]

REMEDIATION EFFORTS—AMA'S EFFORTS

We believe that through a united effort, the medical profession in concert with federal and state governments can dramatically reduce the potential for any adverse effects with the medical community resulting from the Y2K problem. For its part, the AMA has been devoting considerable resources to assist physicians and other health care providers in learning about and correcting the problem.

For nearly a year, the AMA has been educating physicians through two of its publications, AMNews and the Journal of the American Medical Association (JAMA). AMNews, which is a national news magazine widely distributed to physicians and medical students, has regularly featured articles over the last twelve months discussing the Y2K problem, patient safety concerns, reimbursement issues, Y2K legislation, and other related concerns. JAMA, one of the world's leading medical journals, will feature an article written by the Administrator of HCFA, explaining the importance for physicians to become Y2K compliant. The AMA, through these publications, hopes to raise the level of consciousness among physicians of the potential risks associated with the year 2000 for their practices and patients, and identify avenues for resolving some of the anticipated problems.

The AMA has also developed a national campaign entitled ''Moving Medicine Into the New Millennium: Meeting the Year 2000 Challenge,'' which incorporates a variety of educational seminars, assessment surveys, promotional information, and ongoing communication activities designed to help physicians understand and address the numerous complex issues related to the Y2K problem. The AMA is currently conducting a series of surveys to measure the medical profession's state of readiness, assess where problems exist, and identify what resources would best reduce any risk. The AMA already has begun mailing the surveys, and we anticipate receiving responses in the near future. The information we obtain from this survey will enable us to identify which segments of the medical profession are most in need of assistance, and through additional timely surveys, to appropriately tailor our efforts to the specific needs of physicians and their patients. The information will also allow us to more effectively assist our constituent organizations in responding to the precise needs of other physicians across the country.

One of the many seminar series the AMA sponsors is the ''Advanced Regional Response Seminars'' program. We are holding these seminars in various regions of the country and providing specific, case-study information along with practical recommendations for the participants. The seminars also provide tips and recommendations for dealing with vendors and explain various methods for obtaining beneficial resource information. Seminar participants receive a Y2K solutions manual, entitled ''The Year 2000 Problem: Guidelines for Protecting Your Patients and Practice.'' This seventy-five page manual, which is also available to hundreds of thousands of physicians across the country, offers a host of different solutions to Y2K problems that physicians will likely face. It raises physicians' awareness of the problem, year 2000 operational implications for physicians' practices, and identifies numerous resources to address the issue.

In addition, the AMA has opened a web site (URL: www.ama-assn.org) to provide the physician community additional assistance to better address the Y2K problem. The site serves as a central communications clearinghouse, providing up-to-date information about the millennium bug, as well as a special interactive section that permits physicians to post questions and recommended solutions for their specific Y2K problems. The site also incorporates links to other sites that provide additional resource information on the year 2000 problem.

On a related note, the AMA in early 1996 began forming the National Patient Safety Foundation or ''NPSF.'' Our goal was to build a proactive initiative to prevent avoidable injuries to patient in the health care system. In developing the NPSF, the AMA realized that physicians, acting alone, cannot always assure complete patient safety. In fact, the entire community of providers is accountable to our patients, and we all have a responsibility to work together to fashion a systems approach to identifying and managing risk. It was this realization that prompted the AMA to launch the NPSF as a separate organization, which in turn partnered with other health care organizations, health care leaders, research experts and consumer groups from throughout the health care sector.

One of these partnerships is the National Patient Safety Partnership (NPSP), which is a voluntary public-private partnership dedicated to reducing preventable adverse medical events and convened by the Department of Veterans Affairs. Other NPSP members include the American Hospital Association, the Joint Commission on Accreditation of Healthcare Organizations, the American Nurses Association, the Association of America Medical Colleges, the Institute for Healthcare Improvement, and the National Patient Safety Foundation at the AMA. The NPSP has made a concerted effort to increase awareness of the year 2000 hazards that patients relying on certain medical devices could face at the turn of the century.

RECOMMENDATIONS

As an initial step, we recommend that the Administration or Congress work closely with the AMA and other health care leaders to develop a uniform definition of ''compliant'' with regard to medical equipment. There needs to be clear and specific requirements that must be met before vendors are allowed to use the word ''compliant'' in association with their products. Because there is no current standard definition, it may mean different things to different vendors, leaving physicians with confusing, incorrect, or no data at all. Physicians should be able to spend their time caring for patients and not be required to spend their time trying to determine the year 2000 status of the numerous medical equipment vendors with whom they work.

We further suggest that both the public and private sectors encourage and facilitate health care practitioners in becoming more familiar with year 2000 issues and taking action to mitigate their risks. Greater efforts must be made in educating health care consumers about the issues concerning the year 2000, and how they can develop Y2K remediation plans, properly test their systems and devices, and accurately assess their exposure. We recognize and applaud the efforts of this Committee, the Congress, and the Administration in all of your efforts to draw attention to the Y2K problem and the medical community's concerns.

We also recommend that communities and institutions learn from other communities and institutions that have successfully and at least partially solved the problem. Federal, state and local agencies as well as accrediting bodies that routinely address public health issues and disaster preparedness are likely leaders in this area. At the physician level, this means that public health physicians, including those in the military, organized medical staff, and medical directors, will need to be actively involved for a number of reasons. State medical societies can help take a leadership role in coordinating such assessments.

We also must stress that medical device and software manufacturers need to publicly disclose year 2000 compliance information regarding products that are currently in use. Any delay in communicating this information may further jeopardize practitioners' efforts at ensuring compliance. A strategy needs to be developed to more effectively motivate all manufacturers to promptly provide compliance status reports. Additionally, all compliance information should be accurate, complete, sufficiently detailed and readily understandable to physicians. We

suggest that the Congress and the federal government enlist the active participation of the FDA or other government agencies in mandating appropriate reporting procedures for vendors. We highly praise the Department of Veterans Affairs, the FDA, and others who maintain Y2K web sites on medical devices and offer other resources, which have already helped physicians to make initial assessments about their own equipment.

We are aware that the ''Year 2000 Information and Readiness Disclosure Act'' was passed and enacted into law last year, and is intended to provide protection against liability for certain communications regarding Y2K compliance. Although the AMA strongly believes that information must be freely shared between manufacturers and consumers, we continue to caution against providing liability caps to manufacturers in exchange for the Y2K information they may provide, for several reasons. First, as we have stated, generally vendors alone have the information about whether their products were manufactured to comply with year 2000 data. These manufacturers should disclose that information to their consumers without receiving an undue benefit from a liability cap.

Second, manufacturers are not the only entities involved in providing medical device services, nor are they alone at risk if an untoward event occurs. When a product goes through the stream of commerce, several other parties may incur some responsibility for the proper functioning of that product, from equipment retailers to equipment maintenance companies. Each of these parties, including the end-user—the physician—will likely retain significant liability exposure if the device malfunctions because of a Y2K error. However, none of these parties will typically have had sufficient knowledge about the product to have prevented the Y2K error, except the device manufacturer. To limit the manufacturer's liability exposure under these circumstances flies in the face of sound public policy.

We also have to build redundancies and contingencies into the remediation efforts as part of the risk management process. Much attention has been focused on the vulnerability of medical devices to the Y2K bug, but the problem does not end there. Patient injuries can be caused as well by a hospital elevator that stops functioning properly. Or the failure of a heating/ventilation/air conditioning system. Or a power outage. The full panoply of systems that may break down as our perception of the scope of risk expands may not be as easily delineated as the potential problems with medical devices. Building in back-up systems as a fail-safe for these unknown or more diffuse risks is, therefore, absolutely crucial.

As a final point, we need to determine a strategy to notify patients in a responsible and professional way. If it is determined that certain medical devices may have a problem about which patients need to be notified, this needs to be anticipated and planned. Conversely, to the extent we can reassure patients that devices are compliant, this should be done. Registries for implantable devices or diagnosis- or procedure-coding databases may exist, for example, which could help identify patients who have received certain kinds of technologies that need to be upgraded and/or replaced or that are compliant. This information should be utilized as much as possible to help physicians identify patients and communicate with them.

As we approach the year 2000 and determine those segments of the medical industry which we are confident will weather the Y2K problem well, we will all need to reassure the public. We need to recognize that a significant remaining concern is the possibility that the public will overreact to potential Y2K-related problems. The pharmaceutical industry, for instance, is already anticipating extensive stockpiling of medications by individuals and health care facilities. In addition to continuing the remediation efforts, part of our challenge remains to reassure patients that medical treatment can be effectively and safely provided through the transition into the next millennium.

CONCLUSION

We appreciate the Committee's interest in addressing the problems posed by the year 2000, and particularly, those problems that relate to physicians. Because of the broad scope of the millennium problem and physicians' reliance on information technology, we realize that the medical community has significant exposure. The Y2K problem will affect patient care, practice administration, and Medicare/Medicaid reimbursement. The AMA, along with the Congress and other organizations, seeks to better educate the health care community about Y2K issues, and assist health care practitioners in remedying, or at least reducing the impact of, the problem. The public and private sectors must cooperate in these endeavors, while encouraging the dissemination of compliance information.

FOOTNOTES

[1] ''Doctors Fear Patients Will Suffer Ills of the Millennium Bug; Many Are Concerned That Y2K Problem Could Erroneously Mix Medical Data—Botching Prescriptions and Test Results,'' Los Angeles Times, Jan. 5, 1999, p. A5.

[2] Anthes, Gary H., ''Killer Apps; People are Being Killed and Injured by Software and Embedded Systems,'' Computerworld, July 7, 1997.

[3] *Id.*

[4] Morrissey, John, and Weissenstein, Eric, ''What's Bugging Providers,'' Modern Healthcare, July 13, 1998, p. 14. Also, July 23, 1998 Hearing Statement of Dr. Kenneth W. Kizer, Undersecretary for Health Department of Veterans Affairs, before the U.S. Senate Special Committee on the Year 2000 Technology Problem.

[5] ''Year 2000 Bug Bites Doctors; Glitch Stymies Payments for Medicare Work,'' The Times-Picayune, June 6, 1998, page C1.

[6] ''Clinton Says Social Security is Y2K Ready,'' Los Angeles Times, December 29, 1998, p. A1. See ''Government Agencies Behind the Curve on Y2K Issue,'' Business Wire, January 28, 1999 (stating that Computer Week on November 26, 1998 reported only a 34% Y2K compliance level for the Department of Health and Human Services).

[7] ''Health Care Not Y2K-Ready—Survey Says Companies Underestimate Need For Planning; Big Players Join Forces,'' Information Week, January 11, 1999.

[8] GartnerGroup, Kenneth A. Kleinberg, ''Healthcare Worldwide Year 2000 Status,'' July 1998 Conference Presentation, p. 2 (hereinafter, GartnerGroup).

[9] *Id.* at p. 8.

[10] *Id.*

[11] *Id.* at p. 10.

[12] *Id.* at p. 13.

[13] *Id*

Mr. HOLLINGS. I do not want to mislead. As I understand, as of this morning my staff contacted Mr. Emery. And they said that the AMA is not openly opposing the legislation, but if there is going to be legislation, they want to be taken care of. They want all the tort things to take care of them, too.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. I ask unanimous consent to speak for 3 minutes just to briefly respond to several of the points made by the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WYDEN. Thank you, Mr. President. I will be very brief.

I specifically want to talk on this matter with respect to the evidence which would be considered in these suits. The sponsors of the substitute have made it very clear in the Senate that we will strike the clear and convincing evidence standard. It is an important point that the Senator from South Carolina has made.

What we have indicated is that we think it is in the public interest to essentially use the standard the Senate adopted in the Year 2000 Information and Readiness Disclosure Act which passed overwhelmingly in the Senate. So we have something already with a strong level of bipartisan support, and it is an indication again that the sponsors of the substitute want to be sympathetic and address the points being made by the Senator from South Carolina.

But at the end of the day, this is not legislation about trial lawyers or campaign finance. And I have not mentioned either of those subjects on the floor of the Senate. But this is about whether or not the Senate is going to act now, when we have a chance to address this, in a deliberative way, and produce good Government—something which will make sense for consumers and plaintiffs who are wronged and at the same time ensure that we do not have tumult in the marketplace early next year.

I am very hopeful we can go forward with this legislation.

I thank the Presiding Officer for the opportunity to respond. I yield the floor.

Mr. HOLLINGS. Mr. President, I ask unanimous consent I may address the Senate for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I am reading page 30. The language there—the last 3 lines; 23, 24, and 25—''The defendant is not liable unless the plaintiff establishes that element of the claim in accordance with the evidentiary standard required,'' which is the greater weight by the preponderance of the evidence. That is lined out. And written—and I understand in Chairman MCCAIN's handwriting—here, ''by clear and convincing evidence.''

Again on page 31 of the particular bill under consideration, on lines 19 and 20, ''in accordance with the evidentiary standard required'' is lined out; and inserted in lieu thereof ''by clear and convincing evidence.''

That is why I addressed it that way. That is what we have before us.

I thank the Chair.